

ST 01-01-0039-PLR 09/19/2001 AUTOMOBILE RENTING TAX

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax set forth at 35 ILCS 155/1 et seq. See 86 Ill. Adm. Code 180.101. (This is a PLR).

September 19, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of August 6, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Please treat this letter as a private letter ruling request for the Illinois Department of Revenue ('Department') to issue a formal opinion concerning the taxability under the Illinois Use Tax ('UT') and Automobile Renting Occupation and Use Tax Act ('AROT') of COMPANY purchase and lease of automobiles to certain of its employees. This request is made under Department Regulation § 1200.110. COMPANY is not currently under audit or investigation concerning the matters for which this request is being made. However, it was previously audited on this issue, and the audit reached a conclusion consistent with the ruling requested in this letter. Enclosed is a Power of Attorney authorizing my representation of COMPANY.

To the best of COMPANY's and this writer's knowledge, the Department has not previously ruled on the same or similar issue in writing for COMPANY or a predecessor, and neither COMPANY nor any of its representatives had previously submitted the same or similar issue to the Department in writing, but withdrawn it before a letter ruling was issued.

**FACTS**

COMPANY is engaged in the business of renting and leasing automobiles and is registered under the AROT. Some of COMPANY's automobiles are available for lease at a special rate to certain employees of the company. These leases are considered fringe benefit leases, and rather than being listed in a normal rental inventory account, are listed in a company car inventory account. As automobiles become needed or available, they can be freely transferred between these inventory accounts. All of the automobiles purchased to be put into the normal rental inventory account and the company car account are done so tax-free as rental vehicles and are depreciated.

Automobiles, listed in the company car inventory, are used by the employees on a 'monthly basis' for the payment of a monthly CAR fee, as a fringe benefit of employment. The employees must sign a 'personal use option' contract for a minimum of six months. While the contract contains a starting date, it has no ending date. After this six-month period, the lease continues on a 'monthly basis' until cancelled. Both the employee and the employer can terminate the contract after the initial six-month period. The CAR fee is shown on the employee's pay statement and averages \$200 per month. This monthly fee is inclusive of insurance, maintenance, and gasoline. However, the employee also charged a fee for excess mileage.

In a recent audit of COMPANY by the Department, the Audit Division with advice from the Legal Services Division of the Department concluded that monthly CAR charges were subject to the AROT as a lease/rental of an automobile for one year or less. As a result, no Illinois Use Tax was due on the purchase of such vehicles.

### **RELEVANT LAW AND ANALYSIS**

The UT imposes a tax on the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/1 *et seq.* However, motor vehicles used for automobile renting as defined in the AROT are exempt from the UT. 35 ILCS 105/3-5.

The AROT imposes a tax upon persons engaged in Illinois in the business of renting automobiles. 35 ILCS 155/4. 'Renting' is defined under the AROT as the transfer of possession or right to possession of an automobile to a user 'for valuable consideration for a period of one year or less.' 35 ILCS 155/2. A 'rentor' under the AROT is any person 'engaged in the business of renting or leasing automobiles to users.' *Id.* A 'rentee' is any person 'to whom the possession or right to possession of an automobile is transferred for valuable consideration.' *Id.* There is no differentiation in the tax for rentals to employees or agents of the rentor. Rather, all rentals are treated equally. The only reference in the AROT to potential employee transactions which will not be considered rentals are those charges by an automobile dealer to its salesman for the use of a vehicle as a 'demonstrator' vehicle in connection with the dealer's 'business of selling,' when the charge is merely made to 'recover the cost of operating the automobile as a demonstrator.' *Id.*

Applying the AROT to the situation at hand would indicate that the CAR fees charged by COMPANY to certain of its employees are subject to this tax. The charges are monthly fees for a period of less than one year, and are being paid by the employees as consideration for the right to possess the cars for this period of time. In the same regard, the excess mileage charges would similarly be subject to the AROT.

Because the automobiles being leased to COMPANY's employees under either the CAR charge program are subject to the AROT, the purchase cost of such automobiles would not be subject to the UT.

### **CONCLUSION**

COMPANY requests that a private letter ruling be issued by the Department verifying that COMPANY's monthly CAR monthly charges to its employees for the lease or

rental of vehicles (and any associated excess mileage charge) are subject to the AROT. In addition, because these vehicles are subject to the AROT, there would be no UT on the purchase prices that COMPANYS paid for such vehicles.

Neither COMPANY nor the undersigned has any knowledge of any other regulation or ruling by the Department which contradicts the above analysis. If the Department needs more information or is considering not providing the opinion requested above, COMPANY requests that there be a conference between its representative and the Department before any private letter ruling is issued.

Thank you again for your time and consideration of this matter.

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax set forth at 35 ILCS 155/1 et seq. See 86 Ill. Adm. Code 180.101, enclosed. This tax is imposed at the rate of 5% of the gross receipts from such business. "Gross receipts" from the renting of tangible personal property or "rent," means the total rental price or leasing price. See also, 86 Ill. Adm. Code 180.120 and 180.125, enclosed. When automobiles are purchased to be used as rental cars for terms of one year or less, they may be purchased without paying Retailers' Occupation Tax or Use Tax.

Based upon the facts provided in your letter, the automobiles rented to employees under fringe benefit leases are subject to the Automobile Renting Occupation and Use Tax. Therefore, Use Tax is not incurred when such automobiles are purchased.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel

MAJ:msk  
Enc.